

FILED

OCT - 5 2010

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

1 CENTER FOR DISABILITY ACCESS
 2 RAYMOND G. BALLISTER, JR., ESQ., SBN 111282
 3 MARK D. POTTER, ESQ., SBN 166317
 9845 Erma Road, Suite 300
 San Diego, CA 92131-1084
 (858) 375-7385; Fax (888) 422-5191

5 Attorney for Plaintiff

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8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 **10CV 2075 WQH POR**

11 MANUEL CORTES, } Case No.:

12 Plaintiff, } **COMPLAINT FOR DAMAGES FOR**
 13 v. } **VIOLATIONS OF: FAIR HOUSING**
 14 ESSEX CAL-WA, L.P., a California } **AMENDMENTS ACT OF 1988;**
 15 Limited Partnership, and DOES 1 through } **CALIFORNIA'S FAIR HOUSING AND**
 20, inclusive } **EMPLOYMENT ACT; UNRUH CIVIL**
 16 Defendants. } **RIGHTS ACT; CALIFORNIA**
 17 } **DISABLED PERSONS ACT**

18 } **DEMAND FOR JURY**

19 }

20 Plaintiff MANUEL CORTES complains of Defendants ESSEX CAL-WA, L.P.,
 21 a California Limited Partnership, and DOES 1 through 20, inclusive, (hereinafter
 22 referred to as "Defendants") and alleges as follows:

23 **PARTIES:**

24 1. Plaintiff is a California resident with physical disabilities. He is a paraplegic
 25 who uses a wheelchair to ambulate.

26 2. Defendants are or were at the time of the incident the owners and operators
 27 and/or lessors and lessees of the Mission Hills Apartments located at or about 230-260
 28 Rancho Del Oro, Oceanside, California. Plaintiff rented an apartment from the

ORIGINAL

Via fax

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1 defendants.

2 3. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their relative
4 responsibilities in causing the access violations herein complained of, and alleges a
5 joint venture and common enterprise by all such Defendants. Plaintiff is informed and
6 believes that each of the Defendants herein, including DOES 1 through 20, inclusive, is
7 responsible in some capacity for the events herein alleged, or is a necessary party for
8 obtaining appropriate relief. Plaintiff will seek leave to amend when the true names,
9 capacities, connections, and responsibilities of the Defendants and DOES 1 through 20,
10 inclusive, are ascertained.

11 **JURISDICTION:**

12 4. This Court has subject matter jurisdiction over this action pursuant to 28
13 U.S.C. § 1331 and § 1343(a) (3) & (a) (4) for violations of the Fair Housing
14 Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*

15 5. Pursuant to pendant jurisdiction, an attendant and related cause of action,
16 arising from the same nucleus of operative facts and arising out of the same
17 transactions, is also brought under California's Fair Employment and Housing Act,
18 Unruh Civil Rights Act and Disabled Persons Act.

19 **VENUE:**

20 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded
21 on the fact that the real property which is the subject of this action is located in this
22 district and that Plaintiff's cause of action arose in this district

23 **FACTUAL ALLEGATIONS:**

24 7. The Mission Hills Apartment complex ("Mission Hills") is a housing
25 accommodation, a business, and also contains places of public accommodation, *i.e.*, the
26 rental office and the parking and elements that service that rental office.

27 8. The Plaintiff was a resident of Mission Hills from July of 2009 to January of
28 2010.

1 9. While a resident of Mission Hills, the plaintiff used the rental office on a
 2 regular basis for, among other things, paying rent. As required by law, the rental office
 3 has a handicap parking space among the parking spaces that serve the rental office. But
 4 the defendants made it a regular practice of parking a golf cart in the handicap parking
 5 space or required access aisle that served the accessible parking space. This had the
 6 effect of both removing the handicap parking space from use by persons with
 7 disabilities and blocking the accessible path of travel to the ramp to the rental office.

8 10. The Plaintiff personally encountered the blocked handicap parking
 9 space/path of travel on numerous occasions, which condition resulted in difficulty,
 10 discomfort and some minor embarrassment to the plaintiff and resulted in the
 11 plaintiff being denied full and equal access required by law.

12 11. The plaintiff complained on 5 or 6 occasions to the Defendants but the
 13 practice did not stop.

14 12. Because of the ongoing practice of blocking the handicap parking and path of
 15 travel at the rental office and the callous disregard of the Plaintiff's rights, the plaintiff
 16 chose not to live at Mission Hills any further and moved.

17 I. **FIRST CAUSE OF ACTION: VIOLATION OF FAIR HOUSING
 18 AMENDMENTS ACT OF 1988 (On behalf of Plaintiff and Against All
 Defendants) (42 USC § 3602)**

19 13. Plaintiff repleads and incorporates by reference, as if fully set forth again
 20 herein, the allegations contained in all prior paragraphs of this complaint.

21 14. The plaintiff's request that the Defendants change their practice of using the
 22 handicap parking space for a golf cart was modest and reasonable request and it was
 23 necessary to afford the plaintiff an equal opportunity to use and enjoy his dwelling.
 24 The failure to honor this requested accommodation was an act of discrimination.

25 II. **SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S
 26 FAIR HOUSING AND EMPLOYMENT ACT (On behalf of Plaintiff and
 Defendants) (Cal Gov § 12920 et seq.)**

28 15. Plaintiff repleads and incorporates by reference, as if fully set forth again

1 herein, the allegations contained in all prior paragraphs of this complaint.

2 **16.** The plaintiff's request that the Defendants change their practice of using the
3 handicap parking space for a golf cart was modest and reasonable request and it was
4 necessary to afford the plaintiff an equal opportunity to use and enjoy his dwelling.
5 The failure to honor this requested accommodation was an act of discrimination.

6 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
7 RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51
et seq.)**

8 **17.** Plaintiff repleads and incorporates by reference, as if fully set forth again
9 herein, the allegations contained in all prior paragraphs of this complaint.

10 **18.** The rental office is a place of public accommodation and subject to the anti-
11 discrimination provisions of Title III of the ADA. The rental office provided parking
12 as one of its facilities, privileges and accommodations and, therefore, was required to
13 provide handicap or accessible parking. By parking a golf cart on the handicap parking
14 space and/or required access aisle, the Defendants removed the required handicap
15 parking space from use by persons with disabilities and rendered the parking in
16 violation of the ADA and the Unruh Civil Rights Act.

17 **IV. FOURTH CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA
18 DISABLED PERSONS ACT (On behalf of Plaintiff and Against All
Defendants) (Cal Civ § 54-54.8)**

19 **19.** Plaintiff repleads and incorporates by reference, as if fully set forth again
20 herein, the allegations contained in all prior paragraphs of this complaint.

21 **20.** The rental office is a place of public accommodation and subject to the anti-
22 discrimination provisions of Title III of the ADA. The rental office provided parking
23 as one of its facilities, privileges and accommodations and, therefore, was required to
24 provide handicap or accessible parking. By parking a golf cart on the handicap parking
25 space and/or required access aisle, the Defendants removed the required handicap
26 parking space from use by persons with disabilities and rendered the parking in
27 violation of the ADA and the Disabled Persons Act.

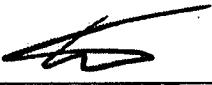
1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide relief as
3 follows:

4 **1.** Damages under the federal and state Fair Housing Acts and the Unruh Civil
5 Rights Act and/or the California Disabled Persons Act. **Note:** A Defendant cannot be
6 held liable for damages under both the Unruh Civil Rights Act and the California
7 Disabled Persons Act and the Plaintiff will make an election at trial depending upon the
8 evidence amassed.

9 **2.** Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to
10 the Americans with Disabilities Act, Unruh Civil Rights Act, the California Disabled
11 Persons Act, the Fair Housing Amendments Act and the California Housing Act.

12 Dated: September 29, 2010 CENTER FOR DISABILITY ACCESS

13
14 By: 
15 MARK D. POTTER
16 Attorneys for Plaintiff

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18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

20
21 Dated: September 29, 2010 CENTER FOR DISABILITY ACCESS

22
23 By: 
24 MARK D. POTTER
25 Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law or as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MANUEL CORTES

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

ESSEX CAL-WA, L.P., a California Limited Partnership, and
DOES 1 through 20, inclusive

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SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

10 CV 2075 WQH

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(c) Attorney's (Firm Name, Address, and Telephone Number)

9845 Erma Road, Suite 300, San Diego, CA 92131-1084
(858) 375-7385; Fax (888) 422-5191

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	<input type="checkbox"/> 4	<input type="checkbox"/> 4	
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> PERSONAL PROPERTY		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> IMMIGRATION		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/29/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 18767MOUNT \$350 -

APPLYING IFP

JUDGE

MAG. JUDGE

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Via fax

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS018767
Cashier ID: mbain
Transaction Date: 10/06/2010
Payer Name: POTTER HANDY

CIVIL FILING FEE
For: CORTES V ESSEX CAL
Case/Party: D-CAS-3-10-CV-002075-001
Amount: \$350.00

CHECK
Check/Money Order Num: 30572
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.